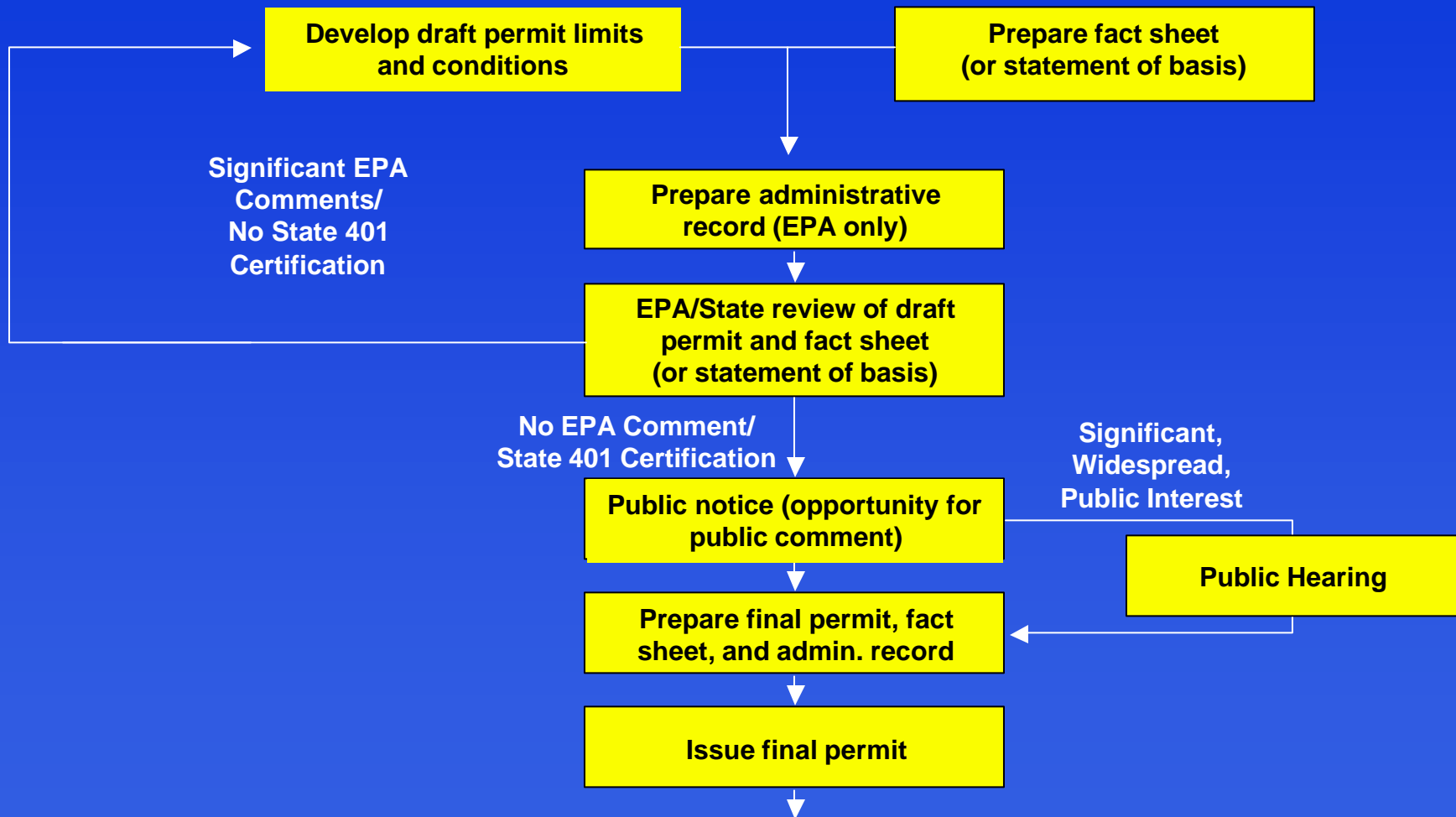

Administrative Process

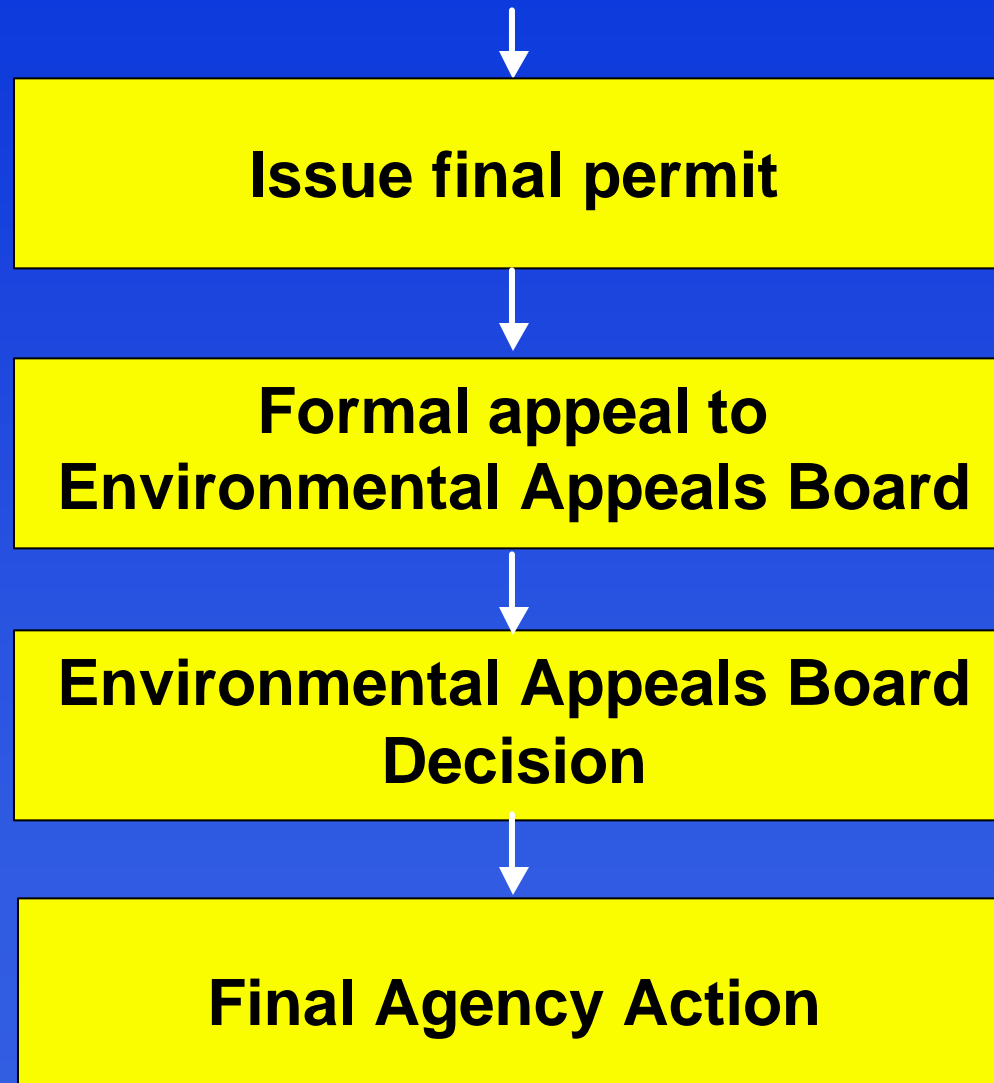
Learning Objectives

- ◆ Describe NPDES permit administrative procedures
- ◆ Discuss requirements and need for documentation
- ◆ Explain public participation requirements
- ◆ Describe administrative activities after final permit issuance

NPDES Permitting Process



NPDES Permitting Process (Continued)



NPDES Administrative Process

- ◆ The administrative process of developing and issuing a permit involves:
 - Documenting all permit decisions
 - Coordinating EPA and State review of the draft permit
 - Providing public notice, conducting hearings (if appropriate), and responding to comments
 - Defending the permit and modifying after issuance (if required)



Reasons for Good Documentation

- ◆ Establishes permanent record of the basis for the permit
- ◆ Explains legal basis of permit
- ◆ Provides sound basis for future modifications and permits
- ◆ Requires permit writer to be organized and logical throughout permit development process

Contents of Administrative Record - Draft Permit

- ◆ What is it?
- ◆ What is in it?
 - Application and supporting data
 - Draft permit
 - Statement of basis or fact sheet
 - Documents/items cited in statement of basis or fact sheet
 - Other items supporting permit development
 - Environmental Impact Statement (EIS) for new source draft permits



Fact Sheet vs. Statement of Basis

Fact Sheet

- ◆ Permit involves a major facility
- ◆ Permit incorporates a variance
- ◆ Permit is an NPDES general permit
- ◆ Permit is subject to widespread public interest

Statement of Basis

- ◆ Used when fact sheet not required
- ◆ Requires:
 - Description of conditions
 - Reasons for conditions

Minimum Elements of a Fact Sheet

- ◆ **General facility information**
 - Description of facility or activity
 - Sketch or description of location
 - Type and quantity of waste/pollutants discharged
- ◆ **Summary rationale of permit conditions**
 - Applicable statutory/regulatory citations
 - References to administrative record

Minimum Elements of a Fact Sheet (Continued)

- ◆ Detailed rationale of permit conditions
 - Explanation and calculation of effluent limitations and conditions
 - Specific explanation of:
 - Toxic pollutant limits
 - Limits on internal wastestreams
 - Case-by-case requirements
 - Limits on indicator pollutants
 - Regulation of users (Non-POTWs only)
 - Sewage sludge land application plan
 - Inappropriateness of requested variances



Minimum Elements of a Fact Sheet (Continued)

◆ Administrative Requirements

- Permit procedures
 - Comment period begin and end dates
 - Procedures for requesting a hearing
 - Public involvement in final decision
- Permitting authority contact name and telephone

EPA and State/Tribal Roles

- ◆ **State/Tribal issued permits**
 - EPA retains the right to review:
 - Major municipal and industrials
 - General permits
 - Class I sludge facilities
 - EPA reviews other significant permits (minor)
- ◆ **EPA issued permits**
 - State/Tribal Section 401 certification required
 - Certifies that permit will achieve water quality standard

Public Notice

- ◆ Purpose of public notice
- ◆ Types of actions requiring public notice
 - Tentative denial of application
 - Draft NPDES permit
 - Public hearing
 - Formal appeal of permit (after issuance)
 - Major permit modifications (after issuance)

Public Notice (Continued)

- ◆ **Methods applicable to public notice process**
 - Publication in newspaper
 - Direct mailing
- ◆ **Contents of public notice**
 - Name and address of regulatory authority
 - Name and address of permittee
 - Brief description of facility
 - Name, address, and telephone of contact
 - Additional information (EPA-issued permits)

Public Notice (Continued)

- ◆ **Timing of public notice**
 - Must allow at least 30 days for public comments
 - EPA/State MOA may specify EPA review of either draft or proposed permit
- ◆ **Responding to comments**
 - Significant comments must be responded to in writing

Public Hearings

- ◆ Public hearings may be requested by any party
- ◆ Hearings are optional
- ◆ Scheduling the hearing automatically extends the comment period until the close of the hearing [40 CFR §124.12(c)]
- ◆ A transcript of the hearing must be available to interested persons

Contents of Administrative Record - Final Permit

- ◆ **Administrative record of draft permit**
- ◆ **All comments received**
- ◆ **Public hearing tape or transcript**
- ◆ **Response to comments**
- ◆ **Final EIS for new sources**
- ◆ **Final permit**

After Final Permit Issuance

- ◆ **Permit appeals**
- ◆ **Minor/major permit modifications**
- ◆ **Permit termination**
- ◆ **Permit Transfer**

Permit Appeal (40 CFR 124.19)

- ◆ Used by permittee to contest final permit limits and conditions
- ◆ Must be requested within 30 days following final permit issuance
 - Challenges limited to issues raised during public comment on draft permit (unless good cause is shown)
- ◆ EAB decides to grant/deny request
- ◆ Public notice of appeal required
- ◆ Only contested permit conditions are stayed

Permit Appeal Continued

- ◆ **Permit writers' role during appeal**
 - **Source of technical knowledge for attorney**

Minor Modifications

- ◆ Used to make corrections to permit conditions with consent of the permittee
- ◆ Exempt from administrative procedures (i.e., draft permit, public notice, etc.)
- ◆ Actions considered minor:
 1. Typographical errors
 2. More frequent monitoring
 3. Change in interim compliance date (<120 days)
 4. Change in ownership
 5. Change in construction schedule for new source
 6. Deletion of point source outfall
 7. Incorporate approved local pretreatment program

Major Modifications

- ◆ Required to address new information that may impact permit conditions
- ◆ Administrative procedures must be followed (i.e., draft permit, public notice, etc.)
- ◆ Causes for modification:
 1. Reopener condition
 2. Correct technical and legal mistakes
 3. Failure to notify interested State
 4. New information
 5. Alterations justifying new/different conditions

Major Modifications Continued

◆ Causes for modification:

6. New regulations
7. Modification of a compliance schedule (>120 days)
8. Require POTW to develop pretreatment programs
9. Unsuccessful BPJ treatment installed
10. Address non-limited pollutants
11. Variance request
12. Adjust limits to reflect net pollutant treatment
13. Insert 307(a) toxic or Part 503 sludge use/disposal
14. Establish notification levels

Permit Terminations

- ◆ Used to retract privilege to discharge during permit term
- ◆ Causes for termination:
 - Suspend effectiveness in emergency
 - Terminate for falsifications, recalcitrants or changed conditions (e.g., plant closure)
- ◆ Administrative procedures must be followed (i.e., public notice)
 - No public notice is required for termination due to plant closure

Permit Transfer

- ◆ **Necessary to address change in owner or operator**
- ◆ **Transfer Options**
 - **Transfer by modification or revocation and reissuance**
 - **Automatic transfer**
 - **Prior 30-day notice**
 - **Written agreement between new and old owners**
 - **Permit will not be modified or revoked**